

AMENDED IN SENATE JUNE 13, 2011

SENATE BILL

No. 807

**Introduced by ~~Committee on Veterans Affairs~~ (Senators ~~Correa~~
~~(Chair)~~, ~~Berryhill~~, ~~Calderon~~, ~~Cannella~~, ~~La Malfa~~, ~~Negrete~~
~~McLeod~~, and ~~Rubio~~) *Senators Correa and Lieu***

February 18, 2011

~~An act to amend Section 1636 of the Military and Veterans Code, relating to the military. An act to amend Section 20636 of the Government Code, relating to retirement, and declaring the urgency thereof, to take effect immediately.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 807, as amended, ~~Committee on Veterans Affairs Correa. National defense.~~ *Retirement: compensation earnable.*

The Public Employees' Retirement Law (PERL) establishes the Public Employees' Retirement System, which is administered by its board of administration, and which provides a defined benefit to its members based on age at retirement, service credit, and final compensation. PERL defines compensation earnable, for purposes of calculating a member's retirement allowance, as the member's payrate and special compensation. PERL specifically excludes from payrate and special compensation for state members any compensation for additional services outside regular duties, such as standby pay, callback pay, court duty, allowance for automobiles, and bonuses for duties performed after the member's regular work shift.

This bill would additionally exclude from payrate and special compensation for state members any allowance for travel expenses or housing.

This bill would declare that it is to take effect immediately as an urgency statute.

~~Existing law for national defense provides for the Sabotage Prevention Act of 1950 and includes definitions for terms therein, including a definition for “defense preparation.”~~

~~This bill would make a technical, nonsubstantive change to this provision.~~

Vote: ~~majority~~^{2/3}. Appropriation: no. Fiscal committee: ~~no~~^{yes}. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 20636 of the Government Code is
2 amended to read:

3 20636. (a) “Compensation earnable” by a member means the
4 payrate and special compensation of the member, as defined by
5 subdivisions (b), (c), and (g), and as limited by Section 21752.5.

6 (b) (1) “Payrate” means the normal monthly rate of pay or base
7 pay of the member paid in cash to similarly situated members of
8 the same group or class of employment for services rendered on
9 a full-time basis during normal working hours, pursuant to publicly
10 available pay schedules. “Payrate,” for a member who is not in a
11 group or class, means the monthly rate of pay or base pay of the
12 member, paid in cash and pursuant to publicly available pay
13 schedules, for services rendered on a full-time basis during normal
14 working hours, subject to the limitations of paragraph (2) of
15 subdivision (e).

16 (2) “Payrate” shall include an amount deducted from a member’s
17 salary for any of the following:

18 (A) Participation in a deferred compensation plan.

19 (B) Payment for participation in a retirement plan that meets
20 the requirements of Section 401(k) of Title 26 of the United States
21 Code.

22 (C) Payment into a money purchase pension plan and trust that
23 meets the requirements of Section 401(a) of Title 26 of the United
24 States Code.

25 (D) Participation in a flexible benefits program.

26 (3) The computation for a leave without pay of a member shall
27 be based on the compensation earnable by him or her at the
28 beginning of the absence.

1 (4) The computation for time prior to entering state service shall
2 be based on the compensation earnable by him or her in the position
3 first held by him or her in state service.

4 (c) (1) Special compensation of a member includes a payment
5 received for special skills, knowledge, abilities, work assignment,
6 workdays or hours, or other work conditions.

7 (2) Special compensation shall be limited to that which is
8 received by a member pursuant to a labor policy or agreement or
9 as otherwise required by state or federal law, to similarly situated
10 members of a group or class of employment that is in addition to
11 payrate. If an individual is not part of a group or class, special
12 compensation shall be limited to that which the board determines
13 is received by similarly situated members in the closest related
14 group or class that is in addition to payrate, subject to the
15 limitations of paragraph (2) of subdivision (e).

16 (3) Special compensation shall be for services rendered during
17 normal working hours and, when reported to the board, the
18 employer shall identify the pay period in which the special
19 compensation was earned.

20 (4) Special compensation may include the full monetary value
21 of normal contributions paid to the board by the employer, on
22 behalf of the member and pursuant to Section 20691, if the
23 employer's labor policy or agreement specifically provides for the
24 inclusion of the normal contribution payment in compensation
25 earnable.

26 (5) The monetary value of a service or noncash advantage
27 furnished by the employer to the member, except as expressly and
28 specifically provided in this part, is not special compensation unless
29 regulations promulgated by the board specifically determine that
30 value to be "special compensation."

31 (6) The board shall promulgate regulations that delineate more
32 specifically and exclusively what constitutes "special
33 compensation" as used in this section. A uniform allowance, the
34 monetary value of employer-provided uniforms, holiday pay, and
35 premium pay for hours worked within the normally scheduled or
36 regular working hours that are in excess of the statutory maximum
37 workweek or work period applicable to the employee under Section
38 201 et seq. of Title 29 of the United States Code shall be included
39 as special compensation and appropriately defined in those
40 regulations.

1 (7) Special compensation does not include any of the following:

2 (A) Final settlement pay.

3 (B) Payments made for additional services rendered outside of
4 normal working hours, whether paid in lump sum or otherwise.

5 (C) Other payments the board has not affirmatively determined
6 to be special compensation.

7 (d) Notwithstanding any other provision of law, payrate and
8 special compensation schedules, ordinances, or similar documents
9 shall be public records available for public scrutiny.

10 (e) (1) As used in this part, “group or class of employment”
11 means a number of employees considered together because they
12 share similarities in job duties, work location, collective bargaining
13 unit, or other logical work-related grouping. One employee may
14 not be considered a group or class.

15 (2) Increases in compensation earnable granted to an employee
16 who is not in a group or class shall be limited during the final
17 compensation period applicable to the employees, as well as the
18 two years immediately preceding the final compensation period,
19 to the average increase in compensation earnable during the same
20 period reported by the employer for all employees who are in the
21 same membership classification, except as may otherwise be
22 determined pursuant to regulations adopted by the board that
23 establish reasonable standards for granting exceptions.

24 (f) As used in this part, “final settlement pay” means pay or
25 cash conversions of employee benefits that are in excess of
26 compensation earnable, that are granted or awarded to a member
27 in connection with, or in anticipation of, a separation from
28 employment. The board shall promulgate regulations that delineate
29 more specifically what constitutes final settlement pay.

30 (g) (1) Notwithstanding subdivision (a), “compensation
31 earnable” for state members means the average monthly
32 compensation, as determined by the board, upon the basis of the
33 average time put in by members in the same group or class of
34 employment and at the same rate of pay, and is composed of the
35 payrate and special compensation of the member. The computation
36 for an absence of a member shall be based on the compensation
37 earnable by him or her at the beginning of the absence and for time
38 prior to entering state service shall be based on the compensation
39 earnable by him or her in the position first held by him or her in
40 that state service.

(2) Notwithstanding subdivision (b), “payrate” for state members means the average monthly remuneration paid in cash out of funds paid by the employer to similarly situated members of the same group or class of employment, in payment for the member’s services or for time during which the member is excused from work because of holidays, sick leave, vacation, compensating time off, or leave of absence. “Payrate” for state members shall include:

(A) An amount deducted from a member’s salary for any of the following:

(i) Participation in a deferred compensation plan established pursuant to Chapter 4 (commencing with Section 19993) of Part 2.6.

(ii) Payment for participation in a retirement plan that meets the requirements of Section 401(k) of Title 26 of the United States Code.

(iii) Payment into a money purchase pension plan and trust that meets the requirements of Section 401(a) of Title 26 of the United States Code.

(iv) Participation in a flexible benefits program.

(B) A payment in cash by the member’s employer to one other than an employee for the purpose of purchasing an annuity contract for a member under an annuity plan that meets the requirements of Section 403(b) of Title 26 of the United States Code.

(C) Employer “pick up” of member contributions that meets the requirements of Section 414(h)(2) of Title 26 of the United States Code.

(D) Disability or workers’ compensation payments to safety members in accordance with Section 4800 of the Labor Code.

(E) Temporary industrial disability payments pursuant to Article 4 (commencing with Section 19869) of Chapter 2.5 of Part 2.6.

(F) Other payments the board may determine to be within “payrate.”

(3) Notwithstanding subdivision (c), “special compensation” for state members shall mean all of the following:

(A) The monetary value, as determined by the board, of living quarters, board, lodging, fuel, laundry, and other advantages of any nature furnished to a member by his or her employer in payment for the member’s services.

(B) Compensation for performing normally required duties, such as holiday pay, bonuses (for duties performed on regular work

1 shift), educational incentive pay, maintenance and noncash
2 payments, out-of-class pay, marksmanship pay, hazard pay,
3 motorcycle pay, paramedic pay, emergency medical technician
4 pay, Peace Officer Standards and Training (POST) certificate pay,
5 and split shift differential.

6 (C) Compensation for uniforms, except as provided in Section
7 20632.

8 (D) Other payments the board may determine to be within
9 “special compensation.”

10 (4) “Payrate” and “special compensation” for state members do
11 not include any of the following:

12 (A) The provision by the state employer of a medical or hospital
13 service or care plan or insurance plan for its employees (other than
14 the purchase of annuity contracts as described below in this
15 subdivision), a contribution by the employer to meet the premium
16 or charge for that plan, or a payment into a private fund to provide
17 health and welfare benefits for employees.

18 (B) A payment by the state employer of the employee portion
19 of taxes imposed by the Federal Insurance Contribution Act.

20 (C) Amounts not available for payment of salaries and that are
21 applied by the employer for the purchase of annuity contracts
22 including those that meet the requirements of Section 403(b) of
23 Title 26 of the United States Code.

24 (D) Benefits paid pursuant to Article 5 (commencing with
25 Section 19878) of Chapter 2.5 of Part 2.6.

26 (E) Employer payments that are to be credited as employee
27 contributions for benefits provided by this system, or employer
28 payments that are to be credited to employee accounts in deferred
29 compensation plans. The amounts deducted from a member’s
30 wages for participation in a deferred compensation plan may not
31 be considered to be “employer payments.”

32 (F) Payments for unused vacation, annual leave, personal leave,
33 sick leave, or compensating time off, whether paid in lump sum
34 or otherwise.

35 (G) Final settlement pay.

36 (H) Payments for overtime, including pay in lieu of vacation or
37 holiday.

38 (I) Compensation for additional services outside regular duties,
39 such as standby pay, callback pay, court duty, allowance for

1 automobiles *or any travel expenses*, and bonuses for duties
2 performed after the member's regular work shift.

3 (J) Amounts not available for payment of salaries and that are
4 applied by the employer for any of the following:

5 (i) The purchase of a retirement plan that meets the requirements
6 of Section 401(k) of Title 26 of the United States Code.

7 (ii) Payment into a money purchase pension plan and trust that
8 meets the requirements of Section 401(a) of Title 26 of the United
9 States Code.

10 (K) Payments made by the employer to or on behalf of its
11 employees who have elected to be covered by a flexible benefits
12 program, where those payments reflect amounts that exceed the
13 employee's salary.

14 (L) *Any allowance for housing.*

15 ~~(L)~~

16 (M) Other payments the board may determine are not "payrate"
17 or "special compensation."

18 (5) If the provisions of this subdivision, including the board's
19 determinations pursuant to subparagraph (F) of paragraph (2) and
20 subparagraph (D) of paragraph (3), are in conflict with the
21 provisions of a memorandum of understanding reached pursuant
22 to Section 3517.5 or 3560, the memorandum of understanding
23 shall be controlling without further legislative action, except that
24 if the provisions of a memorandum of understanding require the
25 expenditure of funds, those provisions may not become effective
26 unless approved by the Legislature in the annual Budget Act. No
27 memorandum of understanding reached pursuant to Section 3517.5
28 or 3560 may exclude from the definition of either "payrate" or
29 "special compensation" a member's base salary payments or
30 payments for time during which the member is excused from work
31 because of holidays, sick leave, vacation, compensating time off,
32 or leave of absence. If items of compensation earnable are included
33 by memorandum of understanding as "payrate" or "special
34 compensation" for retirement purposes for represented and higher
35 education employees pursuant to this paragraph, the Department
36 of Personnel Administration or the Trustees of the California State
37 University shall obtain approval from the board for that inclusion.

38 (6) (A) Subparagraph (B) of paragraph (3) prescribes that
39 compensation earnable includes compensation for performing
40 normally required duties, such as holiday pay, bonuses (for duties

1 performed on regular work shift), educational incentive pay,
2 maintenance and noncash payments, out-of-class pay,
3 marksmanship pay, hazard pay, motorcycle pay, paramedic pay,
4 emergency medical technician pay, POST certificate pay, and split
5 shift differential; and includes compensation for uniforms, except
6 as provided in Section 20632; and subparagraph (I) of paragraph
7 (4) excludes from compensation earnable compensation for
8 additional services outside regular duties, such as standby pay,
9 callback pay, court duty, allowance for automobile, and bonuses
10 for duties performed after regular work shift.

11 (B) Notwithstanding subparagraph (A), the Department of
12 Personnel Administration shall determine which payments and
13 allowances that are paid by the state employer shall be considered
14 compensation for retirement purposes for an employee who either
15 is excluded from the definition of state employee in Section 3513,
16 or is a nonelected officer or employee of the executive branch of
17 government who is not a member of the civil service.

18 (C) Notwithstanding subparagraph (A), the Trustees of the
19 California State University shall determine which payments and
20 allowances that are paid by the trustees shall be considered
21 compensation for retirement purposes for a managerial employee,
22 as defined in Section 3562, or supervisory employee as defined in
23 Section 3580.3.

24 *SEC. 2. This act is an urgency statute necessary for the*
25 *immediate preservation of the public peace, health, or safety within*
26 *the meaning of Article IV of the Constitution and shall go into*
27 *immediate effect. The facts constituting the necessity are:*

28 *Travel and housing allowances have been improperly included*
29 *as compensation in calculating the retirement benefits for certain*
30 *state employees, resulting in increased benefit payments for those*
31 *employees. Due to the state's severe fiscal crisis, and the fiduciary*
32 *responsibility to taxpayers, it is imperative to eliminate these*
33 *inflated retirement benefits at the earliest possible time.*

34 ~~SECTION 1. Section 1636 of the Military and Veterans Code~~
35 ~~is amended to read:~~

36 ~~1636. "Defense preparation" means any of the following:~~

37 ~~(a) The manufacture, transportation, or storage of any product~~
38 ~~to be used in the preparation of the United States or any of the~~
39 ~~states for defense or for war or in the prosecution of war by the~~

- 1 ~~United States or in the rendering of assistance by the United States~~
- 2 ~~to any other nation in connection with that nation's defense.~~
- 3 ~~(b) The manufacture, transportation, distribution, or storage of~~
- 4 ~~gas, oil, coal, electricity, or water.~~
- 5 ~~(c) The operation of any public utility.~~

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